

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte PRASAD Y. CHEBROLU

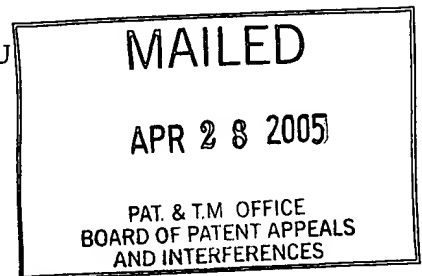
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Appeal No. 2005-0310  
Application No. 09/406,381

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ON BRIEF

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Before THOMAS, GROSS, and LEVY, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellant has appealed to the Board from the examiner's final rejection of claims 1 through 36.

Representative claim 1 is reproduced below:

1. An access server, comprising:

a plurality of modems, each modem associated with a modem identifier;

a memory operable to store a performance attribute for each modem;

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an allocation module coupled to the memory and operable to receive a modem request and to select a modem for service according to the modem's performance attribute; and

a telecommunications interface coupled to the allocation module and operable to couple a remote modem to the selected modem.

The following references are relied on by the examiner:

Thaweethai et al. (Thaweethai)	5,546,379	Aug. 13, 1996
Bush et al. (Bush)	5,828,583	Oct. 27, 1998

Claims 10 and 28 stand rejected under 35 U.S.C. § 102(a) as being anticipated by Thaweethai. Claims 1, 3 through 9, 12 through 19, 21 through 27 and 30 through 36 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner relies upon Thaweethai alone. As to claims 2, 11, 20 and 29, the examiner relies upon Thaweethai in view of Bush.

Rather than repeat the positions of the appellant and the examiner, reference is made to the brief and reply brief for appellant's positions, and to the answer for the examiner's positions.

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OPINION

Except for the examiner's rationale as to the combinability of Thaweethai and Bush to reject claims 2, 11, 20 and 29 under 35 U.S.C. § 103, we generally agree with the examiner's application and reasoning applying Thaweethai alone to the other claims on appeal.

In accordance with appellant's groupings at page 4 of the principal brief on appeal and in view of the actual arguments presented as to all the claims on appeal, appellant considers claim 10 to be representative of claims 10 and 28 rejected under 35 U.S.C. § 102. Appellant also considers claim 1 to be representative as well as the subject matter of independent claim 19 and some of their respective dependent claims. Separate arguments are also presented as to dependent claims 3 and 6 rejected under the first stated rejection under 35 U.S.C. § 103. Likewise, claim 2 is considered representative of claims 2, 11, 20 and 29 in the second stated rejection under 35 U.S.C. § 103. We treat these claims in sequence. Arguments are not presented urging patentability of any other claim on appeal.

Turning first to the rejection of representative claim 10, we agree with the examiner's correlation of the features recited in this claim and the teachings and showings of Thaweethai set

forth initially at page 3 of the answer which has been buttressed by the examiner's responsive arguments as to this rejection at pages 6 and 7 of the answer. We are unpersuaded by appellant's arguments at pages 5 through 8 of the principal brief on appeal urging patentability of representative claim 10.

As does the examiner, we do not agree with appellant's view the so-called modem characteristics in Thaweethai do not represent "performance attributes" as recited in representative claim 10 on appeal and the argument at page 6 of the principal brief that the modem characteristics in Thaweethai are predetermined and therefore not performance attributes of the modem. From our perspective, we agree with the examiner's views that all of the types of modem characteristics taught and shown in Thaweethai clearly would have been considered by the artisan as some kind of performance characteristic or performance attribute to the extent recited in the claims on appeal. We therefore agree with the examiner's observation at page 7 of the answer that the claims do not recite that the modems are selected based on any kind of performance criteria or attribute in that they are merely recited to be stored anyway in the same manner that they are stored in Thaweethai. As such, the claimed performance attributes are predetermined in the same way

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appellant argues against prestored, performance characteristics of Thaweethai's modems.

Thaweethai's modem characteristics are also selected based upon predetermined, prestored information in the same manner as broadly recited in the claims on appeal. As relied upon by the examiner in the rejection, the extensive discussion beginning at column 16 of Thaweethai directly relates to what we believe the artisan would consider to be the performance characteristics and/or performance attributes claimed. Appellant has not recited in any independent claim on appeal the nature of the disclosed performance attributes set forth in the various columns of figure 3.

Even in Thaweethai the plural characteristics are stored for each modem and are selectively used based upon performance needs. Note at least the discussion of modem pooling control functions beginning at column 7, line 35; column 17, lines 32 through 43; column 18, lines 1 through 4 and column 19, lines 18 through 20. Modems in Thaweethai are dynamically configured based upon the requirements of incoming calls to them, clearly indicating performance-based attributes that have been prestored being used to select and configure the modem for any incoming data. We are unpersuaded by appellant's repetition of the basic

arguments at pages 3 and 4 of the reply brief as well. Thaweethai selects one of a plurality of modems based on stored parameters associated with each one of them in an effort to correctly match the operational requirements/characteristics/attribute performance needs of a remote modem.

The examiner's rationale as to the rejection of representative claim 1 on appeal under 35 U.S.C. § 103 is apparently the principal point of contention between the examiner and appellant in that Thaweethai fails to expressly characterize the apparatus of his invention or system as a server. As to this rejection we are unpersuaded by appellant's arguments at pages 8 and 9 of the principal brief on appeal. Appellant's own characterization of the prior art states at specification page 2, lines 12 through 15:

To communicate with one or more client computers, service providers typically use an access server that includes a pool of modems. When the access server receives an initial communication from a client computer, the server allocates the communication to one of the available modems from the modem pool.

Representative claim 1 on appeal only recites an access server in its preamble and there is no clear reference in the body of the claim to this preambular recitation. It is, however,

very clear to us from appellant's recognition of prior art modem pools being in a system that selects one of a plurality of modems, where the system characterized by the term "access server" is indeed generally what the artisan would consider to be the entire system or at least part of it in Thaweethai.

The abstract of Thaweethai plainly indicates that the system of his invention is directed to modem pooling. This topic is discussed at column 1, lines 16 through 19 and 43 through 46 and column 2, lines 26 through 35. Thaweethai's Modem Pooling Control Function (MPCF) is discussed beginning at the middle of column 7. Thus, at least in view of these specific teachings and the entire showing in figure 5 as relied upon by the examiner, Thaweethai makes plain to the artisan that his invention may be properly characterized as an access server because it performs the same functions that are known in the art of modem pooling. Because of this analysis, it is not necessary to treat in detail the arguments revolving around the functionality and/or inherency arguments between the examiner and appellant as to representative claim 1 on appeal in the brief and reply brief.

We now turn to the rejection of claim 3 under 35 U.S.C. § 103 as argued at pages 9 through 11 of the principal brief on appeal. We agree with the examiner's basic reliance upon

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Thaweethai's teaching of the user defined tag as a part of the modem characteristics set forth in Thaweethai to correlate to the claimed user profiles and user identifier. Beginning even in the abstract of the invention, the column 1 discussion and the column 2 discussion of Thaweethai, there are significant discussions relating to authentication procedures between modems which include the use of log-in names and/or passwords. This authentication discussions begins in detail at the top of column 8. As noted by the examiner, at least the discussion at column 16 is pertinent to the subject matter of claim 3 on appeal because the user defined tags at least encompass the ability or capability for modem speed determinations which are used as a basis on which to select one modem from among others based upon the remote modem's speed requirements. The reply brief does not treat the examiner's reasoning as to the statement of the rejection of claim 3 at page 5 of the answer and the responsive arguments at page 9. The rejection of dependent claim 3 is sustained.

Turning next to the subject matter of dependent claim 6 on appeal, we generally agree with the examiner's initial analysis as to the obviousness of this claim at page 5 of the answer as buttressed by the responsive arguments at pages 9 and 10 thereof.



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Appellant's arguments with respect to this claim at pages 11 and 12 of the brief are only general arguments of patentability and do not specifically urge any error in the examiner's positions in the answer. We note further the teachings of link teardown beginning at the top of column 5 of Thaweethai that leads to the top of column 7 of this reference. The existence of various failures and timeout circumstances are discussed at the bottom of column 8. The rejection of claim 6 is sustained.

Lastly, we turn to the rejection of representative claim 2 under 35 U.S.C. § 103 as being obvious over Thaweethai in view of Bush. Although we generally agree with appellant's observation as to this rejection as expressed at pages 12 through 14 of the principal brief and pages 5 and 6 of the reply brief that Thaweethai would not have been combinable within 35 U.S.C. § 103 with a disk-based system of Bush, we still maintain the rejection of representative claim 2 based upon the teachings of Thaweethai alone. The basic premise of Bush relied upon by the examiner of updating performance attributes to the extent recited in claim 2 is believed to have been reasonably taught or suggested to the artisan within Thaweethai alone. The examiner's reliance upon the monitoring teaching at column 3, lines 50 and 51 as well as the teaching at column 2, lines 53 through 57 as

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noted at page 5 of the reply brief contains a teaching value relative to the BOND or Bandwidth-On-Demand function which is obviously in need of updatability on a dynamic basis as the performance characteristics change to the extent recited broadly in claim 2 on appeal. This updatability is characterized in detail at column 13 as well. Software enhancements are also specifically taught among the computer programs set forth in later columns of Thaweethai. The rejection of claim 2 is sustained.

In view of the foregoing, we have sustained the examiner's rejection of claims 10 and 28 under 35 U.S.C. § 102 and the rejection of all remaining claims on appeal under 35 U.S.C. § 103. Therefore, the decision of the examiner rejecting claims 1 through 36 on appeal is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective September 13, 2004; 69 Fed. Reg. 49960 (August 12, 2004); 1286 Off. Gaz. Pat. and TM Office 21 (September 7, 2004)).

AFFIRMED

JAMES D. THOMAS  
Administrative Patent Judge

*Anita Pellman Gross*  
ANITA PELLMAN GROSS  
Administrative Patent Judge

  
STUART S. LEVY  
Administrative Patent Judge

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